

APR 21 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK BRANON,

Defendant - Appellant.

No. 06-10685

D.C. No. CR-02-00750-SRB

MEMORANDUM \*

Appeal from the United States District Court  
for the District of Arizona  
Honorable Susan R. Bolton, U.S. District Judge, Presiding

Submitted April 15, 2008 \*\*

Before: B. FLETCHER, FISHER and PAEZ, Circuit Judges.

A review of the record, the opening brief and the opposition to the motion for summary affirmance indicate that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

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F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Claims unrelated to a remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005), that were available but not raised in the first appeal cannot be raised for the first time at the second appeal. *See United States v. Thornton*, 511 F.3d 1221, 1225 (9th Cir. 2008); *United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006). Further, because appellant's opening brief fails to raise any issues concerning his re-sentencing, he has waived any challenge to his sentence. *See International Union of Bricklayers & Allied Craftsman Local Union No. 20, AFL-CIO v. Martin Jaska, Inc.*, 752 F.2d 1401, 1404 (9th Cir. 1985) (stating that this court will not ordinarily consider matters on appeal that are not specifically and distinctly raised and argued in appellant's opening brief).

Accordingly, appellee's motion for summary affirmance is granted.

All pending motions are denied as moot.

**AFFIRMED.**